

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8137 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

EVERGREEN EXIM PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 8137 of 2004
MR DHAVAL SHAH for Petitioner No. 1
MS DHARMISHTA RAVAL for Respondent No. 1
MR JITENDRA MALKAN for Respondent No. 1
SERVED BY RPAD - (N) for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

Date of decision: 27/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Rule. Learned Standing Counsel Shri J.M.Malkan, waives service of Rule for the respondents.

2. The petitioner - Evergreen Exim Pvt.Ltd. has challenged, in this petition, the impugned order dated 19.1.2004 (Annexure : D) passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the Tribunal"), West Zone Bench at Mumbai, passed in Stay Application No.C/S/1351,1352,1353 of 2003 in Appeal No.C/550, 551 & 552 of 2003, disposing of all the three Stay Applications ordering pre-deposit of Rs.80 lacs to be made by the assessee Company within 12 weeks from the date of the order by waiving further deposit requirement from the assessee or the Director under the provision of Section 129 E of the Customs Act, 1962, and the impugned order (Annexure:F) dated 29.4.2004 passed by the Tribunal dismissing modification Application filed by the petitioner - company.

3. From the impugned order (Annexure:F) passed by the Tribunal dismissing the Modification Application of the petitioner it clearly appears that question of jurisdiction was raised before the Tribunal in Stay Application, filed by the petitioner before the Tribunal, which was disposed of by the impugned order at Annexure:D, but the same was not considered and decided by the learned Tribunal while disposing of the Stay Application by passing conditional order of pre-deposit of Rs.80 lacs by the petitioner company. Specific contentions raised in the Stay Application and the Modification Application by the petitioner was that before the show cause notice was adjudicated the petitioner Unit got converted into "SEZ" and, therefore, adjudication could be done only by the Dy.Commissioner of "SEZ" in view of the Larger Bench decision of the Tribunal in the case of "FERRO ALLOYS CORPORATION LTD. v/s. CC (APPEALS), reported in 1995 (77) ELT 310. Unfortunately, it appears from the order passed by the learned Tribunal in Modification Application that the Tribunal rejected the Stay Application by observing that all the questions, including the question regarding jurisdiction, were kept in view while directing the pre-deposit of Rs.80 lacs, which is in fact not found in the impugned order at Annexure : 'D' passed by the

Tribunal while disposing of the Stay Application.

4. In view of the above, this petition is allowed and the impugned order at Annexures : D & F, passed by the Tribunal, disposing of the Stay Application as well as Modification Application are hereby quashed and set aside and the matter is remitted to the Tribunal for reconsidering the Stay Application on the point of jurisdiction. Rule is made absolute with no order as to costs. Ad.interim relief, granted earlier, stands vacated.

(B.J.Shethna, J.)

Date : September 27, 2004

(Sharad D.Dave, J.)

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